

12/3 (2)

**Christine Joyce**

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**From:** Dean Charter  
**Sent:** Tuesday, November 27, 2012 1:48 PM  
**To:** Manager Department; Steve Ledoux  
**Cc:** Corey York; Christopher Prehl  
**Subject:** Tree Hearing, Dec 3, Willow/MacLeod  
**Attachments:** MGL 87, sec 4.pdf; det. Pherl ltr.pdf; Willow at MacLeod.doc; Trees at Willow Macleod.htm; Re RE Tree Situation on Willow Street is very dangerous.htm; RE Visibility issue at corner of MacLeod Lane and Willow Street.htm; Willow StreetMacLeod Lane pine trees create dangerous road hazard.htm

Steve,

We have a Public Shade Tree Removal Hearing coming up with the Board on December 3 at 7:30 regarding the removal of trees at the intersection of Willow Street and MacLeod Lane. Acting on comments from Det. Prehl and DPW Director York, I posted a number of trees for possible removal to improve sight distance. The hearing was held and no one appeared, but prior to the hearing I received a written notice from one of the residents commenting that the removal of the trees would not improve sight distance and asking for a hearing with the Board. Per MGL Chap. 87, sec. 4, this placed the matter before the Selectmen.

My feeling is still that removal of some of the hardwoods at the intersection will improve the sight distance. Pruning and or removal of some White Pines located on adjacent private property will improve the sight distance even more. Last week I met with Mr. and Mrs. Marcotte, who reside at 159 Willow Street and who own the property the pines are growing on, and they were very agreeable to having the pines carefully pruned, and even to having several removed if the pruning required would severely damage the trees. If the Selectmen and the landowners so allow, I would remove some or all of the hardwoods, and prune or remove some of the private pine trees. I would like to have Chris Prehl and or Corey York come by while the work is in progress so that we can determine the exact scope of work required.

Some of the correspondence from the other neighbors dealt with other issues like signage, speed limits, speed enforcement, etc. that are outside my purview. These issues might come up from the audience on Monday night.

I am attaching the legal notice form the first hearing, a copy of C87 s. 4, some internal correspondence, and a sampling of emails from some of the neighbors.

Regards

Dean A. Charter, MCA, MCPPO  
Municipal Properties Director & Tree Warden

*Liability of town as owner of or in control of the public streets for failure to remove decayed public shade tree constituting nuisance to adjoining land owner does not rest upon "negligence." Jones v. Inhabitants of the Town of Great Barrington, 273 Mass. 483 (1931).*

*Liability of town for failure to remove decayed public shade tree from public highway rests upon facts showing maintenance of such trees constitutes nuisance to such adjacent landowners. Jones v. Inhabitants of the Town of Great Barrington, 273 Mass. 483 (1931).*

*City officer was not negligent in not removing tree from street, in absence of showing that decay was visible. Cody v. City of North Adams, 265 Mass. 54 (1928).*

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**Chapter 87: Section 4. Cutting down or removal of public shade trees, approval of selectmen or mayor.**

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Section 4. Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen or by the mayor. (Added in 1915; no amendments since that time)

*Editorial notes: Please See G.L. Chapter 87, Section 6 (penalty); and Chapter 40, Section 15C (scenic roads).*

*Public shade trees may generally be removed only by the tree warden, and not by him without a public hearing, and not by him without approval by the selectman or mayor if written objection has been made. City of Medford v. Metropolitan District Commission, 303 Mass. 537 (1939).*

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**Chapter 87: Section 5. Cutting down, trimming or removing bushes and small trees**

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Section 5. Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than one and one half inches in diameter one foot from the ground, and bushes, standing in public ways; and, if ordered by the mayor, selectmen, road commissioners or highway surveyor, shall trim or cut down trees and bushes, if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon or to obstruct buildings being moved pursuant to the provisions of section eighteen of chapter eighty-five. Nothing contained in this chapter shall prevent the trimming, cutting or removal of any tree which endangers persons traveling on a highway, or the removal of any tree, if so ordered by the proper officers for the purpose of widening the highway and nothing herein contained shall interfere with the suppression of pests declared to be public nuisances by section eleven of chapter one hundred and thirty-two, including the Dutch elm disease. (Added in 1915; last amended in 1941)

*Editorial notes: Please see G.L. Chapter 87, Sections 3 (cutting) and 6 (penalty); and Chapter 40, Section 15C (scenic roads).*

*An officer having charge of trees belonging to a municipality may, and if required by surveyors or road commissioners shall, trim trees, except public shade trees in towns, and bushes standing in ways, etc., does not authorize a tree warden to cut down trees on private lands nor to cut off parts of such trees extending over the street. Commonwealth v. Byard, 200 Mass. 175 (1908).*

*Designated town officials without notice or hearing were bound to order warden to trim or remove trees dangerous to public travel. Jones v. Inhabitants of the Town of Great Barrington, 273 Mass. 483 (1931).*



To: Dean Charter

From: Det. Chris Prehl

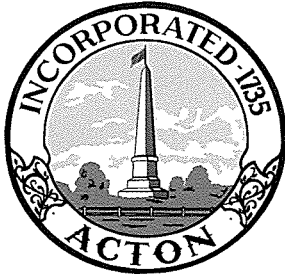
Subject: McLeod Ln. and Willow St.

Date: September 14, 2012

Dean,

I have been contacted by several residents of McLeod Ln. about the visibility issue while exiting McLeod Ln. onto Willow St. The visibility is very poor looking north on Willow St. due to trees that are located at 159 Willow St. I reviewed your memo dated September 13, 2012 in regards to removal of trees at 159 Willow St. I feel that the work that you suggested at 159 Willow would greatly improve the sight distance pulling out of McLeod Ln. and solve the safety issue that this intersection is currently experiencing.

Christopher N. Prehl  
Detective/Safety Officer  
Acton Police Department



**TOWN OF ACTON**  
**Municipal Properties Department**  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 929-7744  
MP@acton-ma.gov

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## **LEGAL NOTICE - Public Shade Tree Removal**

In accordance with MGL Chapter 87, Section 3, notice is hereby given that the Acton Tree Warden will hold a Tree Removal hearing at 3:00 PM on Tuesday, November 6, 2012 in the Faulkner Hearing Room, Acton Town Hall, 472 Main Street, relative to the removal of the following trees:

12 inch DBH Oak  
14 inch DBH Oak  
8 inch DBH Maple  
10 inch DBH Maple  
10 inch DBH Maple  
5 inch DBH Maple  
24 inch DBH Oak

The trees are located at the intersection of Willow Street and MacLeod Lane, and have been marked in the field.

Objection to the proposed removal may be made in writing prior to, or verbally at the hearing.

Dean A. Charter  
Tree Warden

## Christine Joyce

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**From:** Dean Charter  
**Sent:** Thursday, October 25, 2012 3:04 PM  
**To:** Paul Gudit  
**Cc:** pgudit@alum.rpi.edu; Corey York; Steve Ledoux; Christopher Prehl; Manager Department  
**Subject:** Re: Trees at Willow & Macleod

Paul,

Thank you for your note. Under MGL Chap. 87, once an objection to the tree removals has been lodged, the matter will be referred to the Selectmen for a decision. That meeting will occur in the evening, as part of a regularly scheduled meeting. The Tree Warden hearing will still be held as scheduled, but no final decision can be made. I have copied the DPW Director, the Safety Officer, and the Town Manager on this so they can plan accordingly.

Regards

Dean

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Sent from my iPhone

On Oct 25, 2012, at 2:15 PM, "Paul Gudit" <[pgudit@marvell.com](mailto:pgudit@marvell.com)> wrote:

Mr. Charter,

I live at 11 Macleod Lane. I am unable to attend proposed public meeting scheduled for Nov 6<sup>th</sup> at 3:00pm as I am working. I request that it be rescheduled for an evening timeslot.

Please note that removal of the posted hardwood trees at the corner of Willow and Macleod will NOT significantly improve the view of oncoming traffic when attempting to exit Macleod Lane. The view of oncoming traffic is primarily obstructed by the evergreen trees that are too close to the road.

Regards,

Paul Gudit  
11 Macleod Lane  
Acton, MA

**From:** Paul Guditz [pgudit@marvell.com]  
**Sent:** Thursday, October 25, 2012 2:00 PM  
**To:** Dean Charter  
**Cc:** Paul Gudit; pgudit@alum.rpi.edu  
**Subject:** Trees at Willow & Macleod

Mr. Charter,

I live at 11 Macleod Lane. I am unable to attend proposed public meeting scheduled for Nov 6<sup>th</sup> at 3:00pm as I am working. I request that it be rescheduled for an evening timeslot.

Please note that removal of the posted hardwood trees at the corner of Willow and Macleod will NOT significantly improve the view of oncoming traffic when attempting to exit Macleod Lane. The view of oncoming traffic is primarily obstructed by the evergreen trees that are too close to the road.

Regards,

Paul Gudit  
11 Macleod Lane  
Acton, MA

Dear Mr. Charter,

As you are well aware, the tree situation along Willow Street before MacLeod Lane presents a very dangerous risk exposure. I am an insurance executive and I deal with catastrophic accidents all the time. If an accident were to happen at this intersection and the town knew that it posed a dangerous exposure and failed to do something about it. The town could be held liable for gross negligence. I strongly encourage the town aggressively deal with this situation to make the street more safe for all, as soon as possible.

Thank you in advance and I look forward to a safe solution soon. Please feel free to call me if you have any questions.

Best Regards,

Kenneth Hoggins

6 MacLeod Lane

Acton, MA 01720

978-263-5123 (h)

978-793-9463 (c)

## Christine Joyce

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**From:** Ken Hoggins [kheroes@verizon.net]  
**Sent:** Thursday, November 15, 2012 2:05 PM  
**To:** Dean Charter  
**Cc:** Manager Department; Corey York; Christopher Prehl  
**Subject:** Re: Tree Situation on Willow Street is very dangerous

Hi Dean,

Thank you for your note. I would hate to see a bad situation happen due to bureaucracy. Especially, when it could have been prevented. Hopefully the Board of Selectmen will decide to do something quickly before someone gets hurt. In the real world, once a company becomes aware of a dangerous situation, they have a duty to make the exposure safe again. They could be held liable if they choose to do nothing or ignore it. Perhaps the town might consider expediting this issue.

Cheers,

Ken Hoggins  
[www.KensWineGuide.com](http://www.KensWineGuide.com)  
**2012 Award Winner "Best Wine Reviews on a Blog"**

Words to live by: The harder you work, the luckier you get!

On 11/15/12, Dean Charter<[dcharter@acton-ma.gov](mailto:dcharter@acton-ma.gov)> wrote:

Mr. Hoggins,

I was back out on the site this morning looking for bounds and examining the pine trees. Be advised that on November 6 I held a legal hearing under MGL Chapter 87 that is required prior to the removal of the public shade trees. Although no one appeared at the hearing, one of your neighbors had lodged a written protest prior to the hearing, and under the law the matter has been referred to the Board of Selectmen. Had the protest not been lodged, we could have removed the trees this week. The matter will be taken up by the Board at 7:30 PM on Monday, December 3. If you check the Town website after 5:00 on Friday, November 30, you can view the BOS agenda, which should include documents related to this issue. I am copying the Town Manager and the Public Works Director on this message so that they might know of your concerns.

Regards,

Dean A. Charter, MCA, MCPPO

Municipal Properties Director

Town of Acton

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**From:** Ken Hoggins [<mailto:kheroes@verizon.net>]  
**Sent:** Thursday, November 15, 2012 10:45 AM  
**To:** Dean Charter  
**Subject:** Tree Situation on Willow Street is very dangerous



## Christine Joyce

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**From:** Dean Charter  
**Sent:** Thursday, November 15, 2012 2:09 PM  
**To:** 'kherther@comcast.net'  
**Cc:** gary.s.kappel@gmail.com; theresahoggins@verizon.net; clairepic@aol.com; GinaMoran1@verizon.net; mmatson@broadcom.com; meguditz@hotmail.com; Manager Department; Corey York; Christopher Prehl  
**Subject:** RE: Willow St. /Macleod Lane Traffic Safety Visibility Issue - Trees/Signage/Traffic Flow - Information about Upcoming Board of Selectman Meeting Date/Time

Ms. Herther,

Please be advised that the Board of Selectmen will discuss this matter at 7:30 PM on Monday, December 3 in the Faulkner Room, Acton Town Hall. If you check the town website after 5:00 PM on the previous Friday, the posted agenda should include back up documents.

I have copied the Town Manager, Public Works Director, and Safety Officer on this message as the issues about speed limits and signage are outside my purview.

Regards,

Dean A. Charter, MCA, MCPPO  
Municipal Properties Director

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**From:** [kherther@comcast.net](mailto:kherther@comcast.net) [<mailto:kherther@comcast.net>]  
**Sent:** Saturday, November 10, 2012 7:43 PM  
**To:** Dean Charter  
**Cc:** [kherther@comcast.net](mailto:kherther@comcast.net); [gary.s.kappel@gmail.com](mailto:gary.s.kappel@gmail.com); [theresahoggins@verizon.net](mailto:theresahoggins@verizon.net); [clairepic@aol.com](mailto:clairepic@aol.com); [GinaMoran1@verizon.net](mailto:GinaMoran1@verizon.net); [mmatson@broadcom.com](mailto:mmatson@broadcom.com); [meguditz@hotmail.com](mailto:meguditz@hotmail.com)  
**Subject:** Willow St. /Macleod Lane Traffic Safety Visibility Issue - Trees/Signage/Traffic Flow - Information about Upcoming Board of Selectman Meeting Date/Time

Hi Dean, *please confirm receipt. Thank you*

Thank you for your consideration and or keeping Macleod Lane neighbors informed as to next steps following the Nov 6 hearing regarding the very unsafe traffic situation at Willow Street/Macleod Lane (heading East towards West Acton ) due to trees blocking visibility.

We believe that it may take a multi-pronged approach to remediate the unsafe Willow St/Macleod Lane traffic visibility situation which may include a combination of: 1) taking down trees as needed to increase visibility, 2) ongoing trimming of the Evergreen Trees (Willow St), 3) addition of traffic signage (e.g., Blind Curve) and 4) slowing traffic flow on Willow. There have been many near-miss accidents at this location as a direct result of the lack of visibility, blind curve and speed of traffic. Thank you for sharing the above safety concern and possible remediation with the Acton Board of Selectman.

**\*\*Thank you for keeping all of us informed as to when the Willow/Macleod Lane Traffic issue will be discussed by the Board of Selectman meeting. (we discussed that early December was likely). Please advise as to the date, location and approximate timing for the Agenda item so that we may attend the upcoming BOS meeting.\*\***

Thank you.

Best Regards,  
Concerned Acton/Macleod Lane Residents

Karen Herther and Gary Kappel [kherther@comcast.net](mailto:kherther@comcast.net) [gary.s.kappel@gmail.com](mailto:gary.s.kappel@gmail.com)

Theresa and Ken Hoggins [theresahoggins@verizon.net](mailto:theresahoggins@verizon.net)  
Claire Picard and Allan Picard-Fraser [clairepic@aol.com](mailto:clairepic@aol.com)  
Gina and Rob Moran [GinaMoran1@verizon.net](mailto:GinaMoran1@verizon.net)  
Mark and Carol Matson [mmatson@broadcom.com](mailto:mmatson@broadcom.com)  
Maryellen and Paul Guditiz [meguditiz@hotmail.com](mailto:meguditiz@hotmail.com)

## Christine Joyce

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**From:** Dean Charter  
**Sent:** Thursday, November 15, 2012 2:13 PM  
**To:** 'Theresa Hoggins'  
**Cc:** Manager Department; Corey York; Christopher Prehl  
**Subject:** RE: Willow Street/MacLeod Lane pine trees create dangerous road hazard

Ms. Hoggins,

Please be advised that the Board of Selectmen will take this matter up at 7:30 PM on Monday, December 3. I have copied the Town Manager, the Public Works Director, and the Safety Officer on this message so that they can know the full range of your concerns and suggestions.

Regards,

Dean A. Charter, MCA, MCPPO  
Municipal Properties Director

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**From:** Theresa Hoggins [<mailto:theresahoggins@verizon.net>]  
**Sent:** Thursday, November 15, 2012 9:49 AM  
**To:** Dean Charter  
**Subject:** Willow Street/MacLeod Lane pine trees create dangerous road hazard

Dean A. Charter  
Tree Warden  
Acton, MA

Dear Mr. Charter,

As you are aware, the lack of visibility of oncoming traffic when turning from MacLeod Lane onto Willow Street is a dangerous hazard and safety concern for the residents of our street. Unfortunately, I was unable to attend the hearing regarding the removal of the hardwood trees on Nov. 6, 2012.

I am writing to you to let you know that I am very concerned about the dangerous visibility issue when making a left turn from MacLeod Lane onto Willow Street.

I think the best solution to this dangerous road hazard is a multi-pronged approach and prioritized in this order:

- 1.) Ongoing trimming of the evergreen trees (at 159 Willow St – in front of the blue house) – trimmed back to at least to the property line.
- 2.) Removal of the hard wood trees (at 159 Willow St – in front of the blue house). This would help the visibility but would not solve the problem by itself.
- 3.) Additional traffic signage (blind curve, etc.) on Willow Street leading up to MacLeod Lane.
- 4.) Reduce the speed limit in that area of Willow Street and MacLeod Lane.

Given the poor visibility and average speed of the cars traveling down Willow St. this situation is a very serious accident waiting to happen. Since our children often sit in the back driver side seat, such an accident would be catastrophic.

Please let me know when the Board of Selectman meeting is (date, time, location, and approximate timing for the agenda item) so I can plan to attend the upcoming Board of Selectman meeting in person.

Thank you for all of your help regarding this safety concern. I really appreciate all of your efforts and concern for our safety.